The authorties are very much in conflict on this point, the present tendency possibly being to uphold the employees of Y[15] as is evidenced in the two principal cases. This situation is ordinarily called a boycott, but is to be distinguished from the so-called secondary boycott.[16]

PROVISIONS FOR FORFEITURE OUTSIDE THE INSURANCE POLICY

The extreme lengths to which the courts will go in order to hold an insurance company bound is well exemplified in the recent case of *Southland Life Insurance Co. v. Hopkins* (1920, Tex. Civ. App.) 219 S. W. 254. This was a suit upon an insurance policy which gave 31 days without interest as a period of grace for the payment of premiums. A statute required a month's period of grace, with interest. The insured gave an eight months note, without grace, with interest, for a premium, the note providing that if it were not paid at maturity the "policy shall be void, subject to the provisions therein contained." Nine days before the note was due, the company wrote the insured, warning him that the policy would lapse if the note were not paid, but offering to accept a partial payment and to extend the balance. The insured died one day after the note was due, not having paid it. The

[15] *Parkinson Co. v. Building Trades Council* (1908) 154 Calif. 581, 98 Pac. 1027; *Duplex Printing Co. v. Deering* (1918, C. C. A. 2d) 252 Fed. 722 (based on Clayton Act); *Meier v. Speer, supra* note 14; *Jetton-Dekle Lumber Co. v. Mather* (1907) 53 Fla. 969, 43 So. 590 (first Florida case involving a labor dispute); *Reardon v. Caton, supra; State v. Employers of Labor* (1918) 102 Neb. 768, 169 N. W. 717; *Sheehan v. Levy* (1919, Tex.) 215 S. W. 229; *State v. Van Pelt* (1904) 136 N. C. 633, 49 S. E. 177 (held not to be a criminal conspiracy); *Bossert v. Dhuy, supra* note 1; discussed in COMMENTS (1918) 27 YALE LAW JOURNAL, 539.

It will be found that in most of the cases opposed to this view there is the presence of a fifth party, such as a labor leader, who is in a position to dictate to the employees of Y. *Booth & Bro. v. Burgess* (1906) 72 N. J. Eq. 181, 65 Atl. 226; *Jonas Glass Co. v. Glass Bottle Blowers Ass., supra* note 12. Ofttimes, too, the threatening of the customers of W causes the courts to take unfavorable action when it is quite likely that a mere abstention from handling non-union material would not be enjoined. See dissenting opinion of Cornish, J., in *State v. Employers of Labor, supra* note 15; *Burnham v. Dowd* (1914) 217 Mass. 351, 104 N. E. 841.

[16] This distinction is clearly brought out by Justice A. N. Hand in the principal case of *Buyer v. Guillan, supra.* "In that case [*Auburn Draying Co. v. Wardell, supra* note 1] the labor unions used their influence to have the patronage withdrawn from the non-union shop. Dealers, ice deliverers, bakers, butchers, builders, plumbers, and contractors, because of the notices, warnings, and declarations of the defendant, discontinued business with the plaintiff. In other words, there was a secondary boycott in the Auburn Draying Company case which embraced far more than in the case at bar or in the case of *Bossert v. Dhuy* [*supra* note 1]. Here the acts of the defendants were limited to boycotting goods that came to the pier where they were working and were the subject-matter upon which their labor was to be expended."

court allowed a recovery by the plaintiff, J. Boyce dissenting in a strong opinion.

There has been some difference of opinion in the courts as to the effect of a provision for forfeiture in a note given for the premium, where there was no such stipulation in the policy itself. It has been held that such a condition in the note is without effect, in the absence of a stipulation in the policy.[1] Other courts reach the result that such a provision merely creates a condition subsequent, of which the company must avail itself by clear and unequivocal acts, such as demanding payment at maturity and declaring a forfeiture if payment is not made.[2] The orthodox view, however, is that such a provision in the note should have the same effect as if it were contained in the policy also.[3] It would seem that this is the just result, and that the insured should not be allowed the advantage of an extension of time without the corresponding burden of forfeiture. In the instant case, therefore, the company should not be held to have waived the forfeiture by its silence on the day the note was due.[4] The letter written to the insured cannot be made the basis of an estoppel, as it clearly warned the insured of the threatened lapse of the policy, and the insured, being delirious with the influenza, could in no way have relied upon it.

It has long been discussed in the law of insurance whether, in the absence of an estoppel, there can be a waiver of a forfeiture without new consideration. This would seem to depend on the question whether a policy on which a forfeiture has been incurred is void or voidable. In spite of the frequent use of such terms as "void" and "of no effect," the intention of the parties would appear to be that such a clause merely makes the policy voidable, that is, gives the company power to avoid it, but has no further operation. This is the usual interpretation of such a provision to the lay mind. Mr. Ewart, in his article on *Waiver in Insurance*,[5] assumes that such a policy is voidable only, in working out his principle of "election." The modern tendency is certainly toward such an interpretation.[6] If such a con-

[1] *Dwelling-House Ins. Co. v. Hardie* (1887) 37 Kan. 674, 16 Pac. 92.

[2] *Rissler v. Fidelity Mutual Ins. Co.* (1903) 110 Tenn. 411, 75 S. W. 735.

[3] *Frank v. Sun Life Assurance Co.* (1892) 20 Ont. App. 564. See Vance, *Insurance* (1904) 237: "It can make no possible difference in legal contemplation whether the condition avoiding the policy for non-payment of the note is written on the face of the policy, or on the face of the note, or on a premium receipt, or in any other properly executed instrument. It is equally a part of the contract, and should be enforced as made. If the insured has signed, and the insurer has received, a premium note in which it is stipulated that if it shall not be paid at maturity, the policy is to be null and void, a failure to pay operates of itself to avoid the contract, and the mere fact that the insurer may waive the forfeiture if he sees fit, does not affect the case."

[4] *Benholzer v. New York Life Ins. Co.* (1898) 74 Minn. 387, 77 N. W. 295; *Underwood v. Security Life and Annuity Co.* (1917) 108 Tex. 381, 194 S. W. 585.

[5] (1905) 18 HARV. L. REV. 364.

[6] *Kingman v. Lancashire Ins. Co.* (1899) 54 S. C. 599, 32 S. E. 762; *Lantz v. Vermont Life Ins. Co.* (1891) 139 Pa. 546, 21 Atl. 80.

tract is held to be voidable at the option of the company, there is, in legal theory, no necessity for consideration in exercising the power to avoid the policy. It remains legally operative in the absence of an affirmative act of avoidance. It has been definitely held that consideration is not necessary even where no circumstances of estoppel exist.[7] A surety may waive a defense given him by the fact that his creditor has given time to the principal debtor.[8] A party may waive the defense of the statute of limitations without consideration.[9] These are cases of technical defenses which the law regards with disfavor, as it does forfeitures in insurance.

In the instant case the court held that the insured was entitled to one month of grace after the maturity of the note. This holding was based on the fact that the statute specifically required a month of grace. But the statute required a month of grace *with interest,* and the insured here really had eight months of grace with interest. The note plainly specified that it was without grace. Where there is no such statute, the courts are uniform in not adding the period of grace to the time allowed by the note.[10] And under a similar statute the Michigan court refused to add the statutory period to the time allowed.[11]

It would seem that the court erred in holding that no forfeiture had ever occurred and that, if it had, the company was either estopped to show it or had waived the forfeiture.

PRIVILEGED COMMUNICATIONS TO PHYSICIANS

In the famous trial of the Duchess of Kingston for bigamy,[1] Lord Mansfield remarked that "if a surgeon was voluntarily to reveal . . . secrets, to be sure he would be guilty of a breach of honor, and of great indiscretion, but to give that information in a court of justice, which by the law he is bound to do, will never be imputed to him as any indiscretion whatever." Although the latter part of this dictum has become settled law,[2] strangely enough the first part, if the great Chief Justice meant to imply legal liability as attached to such a breach of confi-

[7] *German Ins. Co. v. Pitcher* (1902) 160 Ind. 392, 64 N. E. 921.

[8] *Hooper v. Pike* (1897) 70 Minn. 84, 72 N. W. 829.

[9] Wood, *Limitations* (4th ed. 1916) sec. 68.

[10] *Lefler v. New York Life Ins. Co.* (1906, C. C. A. 8th) 143 Fed. 814; *Bank of Commerce v. New York Life Ins. Co.* (1906) 125 Ga. 552, 54 S. E. 643.

[11] *Schmedding v. Northern Assurance Co.* (1912) 170 Mich. 528, 136 N. W. 361.

[1] *Trial of the Duchess of Kingston* (1776, H. L.) 20 How. St. Tr. 355, 573.

[2] At common law, information obtained while treating patients is not privileged in the sense that a physician can not be compelled to testify to such communication or knowledge upon the witness stand. Wharton, *Criminal Evidence* (10th ed. 1912) sec. 516; 1 Greenleaf, *Evidence* (16th ed. 1899) sec. 247a; see (1900) 64 JUSTICE OF THE PEACE, 241. But this rule has been changed by statute in a majority of American Jurisdictions. 40 Cyc. 2381; 17 Am. St. Rep. 570, note; Greenleaf, *op. cit.;* Evans, *Privileged Communications to Physicians* (1894) 39 CENT. L. J. 114, has a collection of statutory provisions with full discussion.